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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

SARIA NADEEM, Plaintiff and Appellant, v. KPMG LLP, Defendant and Respondent.	A132832 (San Francisco County Super. Ct. No. CGC-08-483071)

Saria Nadeem sued KPMG LLP for damages for harassment, discrimination, and retaliation arising out of her ten-month tenure as a KPMG employee. Nadeem was originally represented by counsel, but proceeded in a jury trial in propria persona. The jury returned a verdict in favor of KPMG. Nadeem challenges the judgment on numerous grounds, alleging evidentiary errors, potential jury irregularities, misconduct of defense counsel, and judicial bias. Her arguments lack merit and we affirm.

I. BACKGROUND

Consistent with well-established rules of appellate review after a trial on the merits, we view the facts in the light most favorable to the judgment. (*Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1119.) Moreover, since Nadeem raises no challenge based on the lack of substantial evidence, we need not summarize the entire record.

Nadeem, a CPA, received a job offer from KPMG, one of the "big four" accounting firms, while she was studying for her master's degree in tax law at Cal State Hayward, and she started work at KPMG in October 2007.

That year, Nadeem worked on three projects for Senior Manager Marcia Harris. According to Harris, Nadeem did not complete the first two projects, and did not work diligently on the third or appear to understand it. Harris reported the deficiencies in Nadeem's performance to Manager Vivian Wang.

Nadeem also failed, after two attempts, to complete a project for Senior Associate Emily Hall, who testified that Nadeem did not listen to her feedback after the first attempt. Hall worried that she was being unclear, so she repeated her instructions to Nadeem in Wang's presence. Hall testified that she was "very specific on points about what needed to be done and what hadn't been done. [¶] And instead of addressing those points, Saria would basically come back with real bizarre comments about how she's a CPA, she has a Masters in Taxation . . . ." Hall said, "It was just frustrating. I worked with tons of associates in my life. I never experienced anything like that."

In late January or early February 2008, Nadeem was assigned to work on a project with Partner Eric Hoedt, Senior Manager Kevin Nishioka, and Senior Associate Aaron Hammon. Hammon testified that Nadeem created problems by asking Senior Associate Jaspreet Singh and Associate Patrick Birchfield, who were not on the project team, for help. Hammon recalled an instance when Nadeem approached him while he was on the phone. He told her to wait for a second, and she went to Singh for assistance. When Hammon reminded Nadeem that she should be directing her questions to him, she said that "she liked working with Jaspreet better; that she didn't want my help," and walked away to her cubicle. Hammon followed and told her, "I am not the bad guy here. I am really here trying to help you grow as a professional to work on the project together." But Nadeem ignored him and put her hand up so that he could not see her face. Hammon was "shocked" and did not know what to do. "This hadn't happened to [him] in the two plus years [he] had been at KPMG . . . managing other folks on other projects."

Hammon reported the incident to Wang, and Hammon, Wang, and Nishioka met with Nadeem on February 6. Nishioka testified that when Nadeem objected to the instruction to seek help within her project team, he said something to the effect that "the workplace is not a democracy." Wang recalled Nishioka talking in a raised voice after

Nadeem repeatedly interrupted him. Nishioka wrote a memorandum about the meeting to Edward Silicani, the partner in charge of KPMG's Northern California Tax Practice. Nishioka said that he wanted to record what transpired at the meeting because "[n]ever before or never since in my professional experience have I worked with an employee who was so uncooperative and so resistant to following instruction." Nishioka reported that at one point in the meeting Nadeem stated that he was discriminating against her because she had seen him help associates who were working on projects for other managers.

Nishioka and Wang also reported their concerns about the meeting to HR Manager Adrian Pancamo. Pancamo met with Nadeem, and she told him that Nishioka discriminated against her by helping other people while refusing to help her. She also said that Hammon made her uncomfortable because he sat or stood too close to her when they interacted at the office. Nishioka told Pancamo that he could not remember refusing to help Nadeem. Hammon told Pancamo that he had never sat or stood too close to Nadeem, and Nishioka, Wang, and Singh told Pancamo that they had never seen Hammon sitting or standing too close to Nadeem or anyone else. Pancamo concluded that Nadeem's claims of discrimination or harassment were unfounded.

KPMG had a happy hour at a pub after work on Friday, February 22. People reported to Pancamo that Nadeem behaved inappropriately at the party, slurring her words, falling to the floor, and vomiting in the bathroom and in the backseat of a car that belonged to a co-worker's boyfriend. Dean Kamahele, the KPMG partner who interviewed and hired Nadeem, testified that she followed him around throughout the party to the point were he felt compelled to leave. Nadeem acknowledged that she had a cocktail and a glass of wine and that she vomited in the bathroom, but testified that the other reports of her behavior were untrue. She went on disability leave the following Monday, saw a psychologist, and was prescribed Zoloft.

When Nadeem returned from leave on March 24, she was given a document entitled "Final Warning" based on her "[un]professional decorum" and "completely inappropriate and unacceptable" behavior at the happy hour. The reprimand increased her anxiety, and she went back on disability leave until June 16.

On April 11, Nadeem wrote a letter to Shaun Kelly, head of KPMG's national tax operations, and requested a transfer from the Federal Tax Compliance Department to the Consulting Department. She alleged, among other things, that Wang's behavior and Nishioka's attitude toward her had been discriminatory, and that Nishioka and Hammon had made "some racist comments about my background." During trial Nadeem testified that Hammon also sexually harassed her by, among other things, "touch[ing] my hand, rubb[ing] against me," referring to his muscles, and telling her she should date him. On cross-examination Nadeem said she failed to mention Hammon's harassment in her April 11 letter because, "I forgot, maybe. I don't know."

Karen Frechou, a KPMG Associate Director of HR, was assigned to investigate the claims made in Nadeem's April 11 letter, and met with her on June 26. Nadeem told Frechou that at the February 6 meeting Nishioka called her a "little brown girl." Nadeem did not voice any complaints about Hammon. Fechou met with everyone mentioned in the letter and concluded that nothing reflective of discrimination occurred at the February 6 meeting.

On July 7, Silicani, Pancamo, and Wang met with Nadeem and gave her a Performance Improvement Plan (PIP) that noted deficiencies in her performance in three areas: difficulty following instructions; lack of open and honest communication; and unexpected absences or leaving work early without permission. Silicani began to review the document with Nadeem, but she said she felt ill and the meeting lasted only two or three minutes.

The evening of July 15, Nadeem sent Pancamo and Wang an email contesting the deficiencies cited in the PIP. They met with Nadeem about the PIP the next day. Pancamo received reports from Wang on July 21 and 23 that Nadeem's problems in the areas identified in the PIP were continuing. Wang testified that Nadeem yelled at her on the afternoon of the 23rd.

Nadeem's employment was terminated on July 24th. While Pancamo was escorting Nadeem out of the building, a complaint she had filed with the EEOC charging KPMG with discrimination was delivered to his desk. He did not investigate the

allegations in the complaint because Nadeem's employment was terminated before he received it.

II. DISCUSSION

A. Evidentiary Issues

(1) Levy's Testimony

Dr. Mark Levy is a psychiatrist who testified for KPMG. Dr. Levy interviewed Nadeem and concluded that she suffered no "emotional damages" as a result of the termination of her employment. Nadeem objected to Levy's testimony on the ground that his opinion was based in part on tests administered to her by Dr. Ronald Roberts, a psychologist.

The court ruled that Levy's testimony would be limited to the issue of Nadeem's emotional distress damages. When the scope of Levy's testimony was discussed at trial, the court advised KPMG that Levy's "got to be pretty careful" not to say "the witness is making it up because of a psychological condition." The court observed that "[w]e do not have experts on credibility," and warned that it would strike Levy's testimony if it was not confined to Nadeem's alleged emotional distress. The court was concerned enough about the scope of Levy's testimony to ask during his direct examination —"the first question," the court said, that "I have asked in this trial" — if Levy had been retained to evaluate whether Nadeem's termination caused her emotional distress. When Levy answered, "Yes," the court stated, "The Doctor will then confine his testimony to that area."

Dr. Levy said that he hired Dr. Roberts to give Nadeem a battery of psychological tests, including the Minnesota Multiphasic Personality Inventory test and the Rorschach test. Levy worked from computer-generated summaries of the test results, and had not seen the results themselves. The testing revealed little or no evidence of anxiety or depression, but showed that Nadeem suffered from "Undifferentiated Somatoform Disorder" and a "Personality Disorder Not Otherwise Specified With Histrionic and Dependent Traits." Undifferentiated Somatoform Disorder is a chronic condition, usually established in a person's early to mid-twenties, where the individual "expresses their

emotional upset through physical discomfort." Nadeem's personality disorder would similarly have been established during her adolescence. Both conditions were "underlying, long standing patterns to her behavior," and thus neither was related to her employment with KPMG.

On cross-examination, Nadeem asked what evidence Levy had of her personality disorder. Levy answered: "The Rorschach test report which is generated by a computer based on your responses to the ink blots said: 'She demonstrates a mild to moderate impairment of her reality testing capacity whereby she tends to misperceive events and form mistaken impressions of people and the significance of their actions. This may be an adaptive liability for her that results at times in instances of poor judgment in which she fails to anticipate the consequences of her actions and misconstrues what constitutes appropriate behavior.' "

Nadeem argues, citing what is now Code of Civil Procedure section 2034.260, subdivision (c), that Levy's testimony was erroneously admitted because KPMG did not provide her with a declaration describing the general substance of the testimony he was expected to give. KPMG's brief states that it provided the required declaration. Nadeem's reply brief calls this statement an "outright lie." Whether or not the declaration was furnished, Nadeem's argument fails because she has not established that she objected during trial to admission of Levy's testimony on the ground she now asserts. (Evid. Code, § 353, subd. (a) [a timely objection, "so stated as to make clear the specific ground of the objection" is required].) Moreover, Nadeem was not prejudiced by any failure to furnish the declaration. She was aware, having deposed Levy, of the substance of his anticipated testimony.

Nadeem argues that admission of Levy's testimony violated Evidence Code section 804, subdivision (c). Evidence Code section 804, subdivision (a) states: "If a witness testifying as an expert testifies that his opinion is based in whole or in part upon the opinion or statement of another person, such other person may be called and examined by any adverse party as if under cross-examination concerning the opinion or statement." Evidence Code section 804, subdivision (c) states: "Nothing in this section

makes admissible an expert opinion that is inadmissible because it is based in whole or in part on the opinion or statement of another." Nadeem's Evidence Code section 804 argument must be rejected because she has not established it was raised in the trial court. (Evid. Code, § 353, subd. (a).) The argument must also be rejected because it is advanced for the first time in Nadeem's reply brief. (*Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1372, fn. 11 (*Reed*).) Even if it were preserved and properly asserted, the argument would fail because it erroneously presumes that an expert cannot rely on inadmissible hearsay. (See, e.g., *Korsak v. Atlas Hotels, Inc.* (1992) 2 Cal.App.4th 1516, 1524 [hearsay evidence of a type reasonably relied upon by professionals in the field may be used to support an expert opinion even though the evidence is otherwise inadmissible].)

During trial Nadeem did object to Dr. Levy's testimony on the ground that he should not have been allowed to testify about tests administered by Dr. Roberts. Her objection was correctly overruled. (See 1 Witkin, Cal. Evidence (5th ed. 2012) Opinion Evidence, § 34, p. 653 and authorities cited (hereafter Witkin) [a doctor may base an opinion on an examination made by another doctor].)

Nadeem asserts that Levy's "hearsay opinion struck [her] like weapons of mass destruction at the trial," and that the court's failure to exclude his testimony "left [her] as a lamb to wolves." She views the court's handling of Levy's testimony as one of the many instances of alleged judicial misconduct in the case, exhibiting what she describes as "a systematic pattern of judicial hostility which consisted of continual assistance of [the] defense at the expense of plaintiff."

But whatever prejudice Nadeem may have suffered due to Levy's testimony is irrelevant unless the testimony was erroneously admitted, which it was not. The record shows that the court carefully circumscribed Levy's testimony to prevent it from becoming an unduly prejudicial opinion about Nadeem's credibility. Contrary to her impression, the court questioned Levy to help, not harm, her case by limiting the scope of his opinion. Moreover, Nadeem was the one who elicited the testimony that, because of the alleged disorder, "she tends to misperceive events and form mistaken impressions of

people and the significance of their actions." Thus, she cannot properly complain about the introduction of that evidence.

(2) EEOC Case Log and Complaint

Nadeem contends that the court erred when it excluded her exhibits 32 and 33.

(a) Exhibit 32

Nadeem testified that she filed "a charge of discrimination based on sex retaliation and national origin" on July 17, 2008. Exhibit 32 purported to be the EEOC case log showing activity on the charge. The date "7/23/08" was handwritten on the log as the date of "Notice Served on Respondent." When Nadeem attempted to testify regarding what she was told when she asked an EEOC case worker when the charge was served on KPMG, the court sustained KPMG's hearsay objection. Nadeem then attempted to testify that the EEOC sent her a copy of the case log. KPMG objected on the grounds of hearsay and lack of foundation, and that objection was also sustained. When Nadeem said that the log was not being offered for the truth of its contents, the following colloquy ensued: "The Court: All right. Are you attempting to offer what you were told? [¶] [Nadeem]: Yes. [¶] The Court: Sustained If you're offering a piece of paper, you have other evidentiary requirements. [¶] [Nadeem]: This case log is related to my complaint which I — [¶] The Court: You are going to need to have some other evidentiary requirements than what you have offered so far. I suggest you move on to the next area."

Exhibit 32 was next discussed during argument on KPMG's unsuccessful motion for a nonsuit. The court explained to Nadeem that the document had not been authenticated. Exhibit 32 was discussed again after Nadeem's initial closing argument to the jury, when she told the court that she believed it should be in evidence. The court ruled that no foundation had been laid for its admission.

Nadeem argues that exhibit 32 was admissible under the official records exception to the hearsay rule. (Evid. Code, § 1280.) In general, "even though a writing is relevant and not subject to an exclusionary rule . . . a foundation must be laid by authentication before it can be introduced into evidence." (2 Witkin, *supra*, Documentary Evidence, § 3, p. 151.) Exhibit 32 was not authenticated. The court can admit an official record or

report " 'without necessarily requiring a witness to testify as to its identity and mode of preparation if the court takes judicial notice or if sufficient independent evidence shows that the record or report was prepared in such a manner as to assure its trustworthiness.' " (1 Witkin, *supra*, Hearsay, § 247, p. 1113.) However, judicial notice was not requested, and no independent evidence regarding the report's preparation was identified to the trial court. Thus, the court did not err in excluding exhibit 32.

(b) Exhibit 33

Exhibit 33 was a copy of Nadeem's July 17, 2008, complaint to the EEOC alleging that she had been subject to discrimination because of her gender and national origin. Any error in excluding this exhibit was harmless because in the special verdict on Nadeem's retaliation claim the jury concluded that she had complained to KPMG management about being harassed or discriminated against because of her gender and national origin before her employment was terminated. (Evid. Code, § 353 [erroneous exclusion of evidence is not reversible error unless it caused a miscarriage of justice].)

(3) Other Evidentiary Issues

Nadeem argues that the court erroneously admitted defense exhibit 57, which was a copy of an email from Wang to Pancamo reporting on Nadeem's continued problems with the performance issues identified in her PIP. The court overruled Nadeem's hearsay objection because the exhibit was not offered for the truth of its contents, but only to show what information KPMG's human resources personnel received before KPMG decided to terminate Nadeem's employment. The court did not err in admitting the document for this nonhearsay purpose. (See generally 1 Witkin, *supra*, Hearsay, § 1 [defining hearsay].)

Nadeem argues that the court violated her Fourteenth Amendment right to equal protection by overruling "almost each and every hearsay objection" she made, but the court's evidentiary rulings did not implicate that constitutional guarantee.

B. Jury Issues

(1) Juror Identifying Information

Nadeem contends that the court erred when it denied her application for the addresses and phone numbers of the jurors who served in the case so she could investigate whether any juror misconduct occurred. Nadeem's appellate briefs state that she was informed by juror Sally Kipper that the jurors considered evidence that was not presented in court and "there was unauthorized contact with the jury." Although Nadeem's opening brief states that she received this information from Kipper in May 2011, she did not include it in her June 2011 declaration in support of her application for the juror information. Her declaration identified no cause to suspect any juror misconduct, but she argued in the application that she was entitled to the juror identifying information under Code of Civil Procedure section 237, subdivision (a).

Code of Civil Procedure section 237 provides in part: "(a)(1) The names of qualified jurors drawn from the qualified juror list for the superior court shall be made available to the public upon request unless the court determines that a compelling interest, as defined in subdivision (b), requires that this information should be kept confidential or its use limited in whole or in part.

"(2) Upon the recording of a jury's verdict in a criminal jury proceeding, the court's record of personal juror identifying information of trial jurors, as defined in Section 194, consisting of names, addresses, and telephone numbers, shall be sealed until further order of the court as provided by this section. [¶] . . . [¶]

"(b) Any person may petition the court for access to these records. The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information, but shall not set the matter for hearing if there is a showing on the record of facts that establish a compelling interest against disclosure. A compelling interest includes, but is not limited to, protecting jurors from threats or danger of physical harm. If the court does

not set the matter for hearing, the court shall by minute order set forth the reasons and make express findings either of a lack of a prima facie showing of good cause or the presence of a compelling interest against disclosure.

"(c) If a hearing is set pursuant to subdivision (b), the petitioner shall provide notice of the petition and the time and place of the hearing at least 20 days prior to the date of the hearing to the parties in the criminal action. The court shall provide notice to each affected former juror by personal service or by first-class mail, addressed to the last known address of the former juror as shown in the records of the court. . . . Any affected former juror may appear in person, in writing, by telephone, or by counsel to protest the granting of the petition."

The court here apparently followed the procedures set forth in subdivisions (b) and (c) of Civil Code section 237. Notice of a hearing on the application was sent to the former jurors, one of whom appeared and objected to disclosure of her identifying information. The order denying Nadeem's application for juror information is not included in the clerk's transcript, but is attached to her civil case information statement on appeal. The order did not cite any compelling interest that militated against disclosure of the information.

It is not entirely clear whether Civil Code section 237, subdivision (b) applies in a civil case. The reference to a "criminal action" in the first sentence of subdivision (c) suggests that it may not, but the language of subdivision (b) is not limited to criminal cases. If subdivision (b) applied, then the withholding of juror information was not an abuse of discretion because no good cause was shown for its disclosure. (See *People v. Jones* (1998) 17 Cal.4th 279, 317 [scope of review of rulings under Code Civ. Proc., § 237].)

If subdivision (b) did not apply, then there was no abuse of the court's inherent discretion to protect juror privacy. (See generally *Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1091, 1096 [entirely apart from Code Civ. Proc., § 237, court has inherent power to protect juror privacy in civil as well as criminal cases; exercise of that power is reviewed for abuse of discretion].) A litigant seeking jurors' addresses and phone

numbers must make " 'a sufficient showing to support a reasonable belief that jury misconduct occurred, that diligent efforts were made to contact the jurors through other means, and that further investigation is necessary to provide the court with adequate information to rule on a motion for new trial . . . [¶] Absent a satisfactory, preliminary showing of possible juror misconduct, the strong public interests in the integrity of our jury system and a juror's right to privacy outweigh the countervailing public interest served by disclosure of the juror information as a matter of right in each case.' " (*Id.* at pp. 1093–1094.) Nadeem did not make the requisite preliminary showing.

Nadeem's argument for error in this case finds support in a treatise that states, citing Code of Civil Procedure section 237, subdivision (a): "To investigate claims of juror misconduct, one side or the other may ask the court clerk or the jury commissioner for the jurors' addresses and telephone numbers. In civil cases, such information 'shall' be made available upon request unless the court determines that a 'compelling interest' requires confidentiality." (Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2012) ¶ 18:138.1, p. 18-34 (rev. #1 2012).) We do not agree with this statement because Code of Civil Procedure section 237, subdivision (a) refers only to disclosure of jurors' names, which were revealed here during voir dire, not other juror information such as addresses and telephone numbers. (See Code Civ. Proc., § 206, subd. (g) [defining "personal juror identifying information" for purposes of Code Civ. Proc., § 237].) Thus, the court could deny Nadeem's application without finding that the decision was justified by a compelling interest.

(2) Other Jury Issues

Nadeem contends that KPMG improperly used peremptory challenges to exclude women from the jury. But Nadeem's opening brief only provides the following details of voir dire. "On March 23, 2011, Defense Counsel used peremptory challenges to exclude women from the jury. Jury consisted of 9 men and only 3 women." Nadeem cannot prevail on a jury selection argument without discussing what was said during voir dire, and has forfeited this argument by inadequate briefing. (See, e.g., *Kelly v. CB&I*

Constructors, Inc. (2009) 179 Cal.App.4th 442, 452 [issues not properly addressed may be deemed abandoned].)

Nadeem submits that the court erred by failing to instruct the jury on intentional infliction of emotional distress. However, she did not plead a cause of action for intentional infliction of emotional distress in her complaint, and she does not cite to any request in the record for such a jury instruction. Therefore, she has no basis to assert the alleged error. (*United States Golf Assn. v. Arroyo Software Corp.* (1999) 69 Cal.App.4th 607, 623 ["appellant cannot challenge a judgment on the basis of a new cause of action it did not advance below"].)

Nadeem argues that the standard instruction on hostile work environment harassment, CACI No. 2521A, as furnished to the jury here referred to harassment based on national origin as well as gender. However, she misreads the instruction when she claims that it "add[ed] an additional requirement of national origin to the harassment claim." The instruction required proof that she was "subjected to unwanted harassing conduct because of her gender, apparent national origin, *or* a combination thereof." (Italics added.) Since the grounds of liability are set forth in the disjunctive, the instruction did not require proof of both harassment based on national origin and gender. Rather, harassment based on national origin was an independent ground of liability under the instruction, even if no harassment based on gender occurred. Nadeem was thus helped, not hurt, by the reference to national origin.

Nadeem argues that the court erroneously informed the jury that it could not request readings of testimony during deliberations. This argument misreads the record. The court did not say that. The court told the jury that readings of testimony were available, but that requests for them were time consuming and should be narrowly focused. No error appears.

Nadeem argues that the court violated Code of Civil Procedure section 614 by communicating with the jury outside her presence. Code of Civil Procedure section 614 requires that the parties or counsel be present when the court addresses any "disagreement between [the jurors] as to any part of the testimony, or . . . any point of

law arising in the cause." Nadeem was not present when the jurors returned to court at the end of their first day of deliberations. Before the proceedings were adjourned, a juror asked whether the jury's service would be over after it rendered its verdicts, or there was a "a possibility that one side or the other may want to go through each one us for another day or two?" The court responded that polling of the jury would take only ten or 15 minutes. Since the inquiry and the court's answer were not about a point of law or fact in the case, they did not violate Code of Civil Procedure section 614, and Nadeem could not conceivably have been prejudiced by the court's advice.

Nadeem notes that, before proceedings adjourned on the first day of deliberations, the court failed to admonish the jurors pursuant to Code of Civil Procedure section 611 that they were not to investigate or discuss the case. However, the jurors had frequently received that admonition during the trial, and there is no reasonable prospect that they would have disregarded it during deliberations.

C. Misconduct of Counsel

Nadeem maintains that KPMG's counsel committed misconduct at numerous points in his closing argument to the jury. All but one of her contentions are forfeited because she failed to object when the arguments were made. (See, e.g., *Sabella v. Southern Pac. Co.* (1969) 70 Cal.2d 311, 318 [objection and request for jury admonition are required unless admonition would have been ineffective; admonitions are rarely ineffective].) The only point at which Nadeem objected during closing argument was when counsel began to refer to her personality disorders. The objection was correctly overruled because counsel was merely recounting evidence introduced in the case.

Even if Nadeem had preserved her other allegations of misconduct for appellate review we would conclude that they lack merit. All of the arguments Nadeem regards as objectionable were well within counsel's wide latitude to argue all reasonable inferences from the evidence. (*Garcia v. ConMed Corp.* (2012) 204 Cal.App.4th 144, 147–148.)

D. Judicial Bias

Nadeem argues that the judge was biased against her and tarnished her case in the eyes of the jury with statements during the trial. " Bias or prejudice consists of a 'mental

attitude or disposition of the judge towards a party to the litigation . . . .' " (*Pacific etc. Conference of United Methodist Church v. Superior Court* (1978) 82 Cal.App.3d 72, 86.) Bias is evaluated objectively by asking whether a reasonable person " ' " 'would entertain doubts concerning the judge's impartiality.' " ' " (*Hall v. Harker* (1999) 69 Cal.App.4th 836, 841 (*Hall*).) "Neither strained relations between a judge and an attorney" (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724), nor a judge's expressions of "understandable frustration" (*People v. Brown* (1993) 6 Cal.4th 322, 337 (*Brown*); *Hall, supra*, 69 Cal.App.4th at p. 843) establish bias. Nadeem's allegations of bias do not withstand scrutiny.

She contends, for example, that the judge "mocked the self-represented plaintiff when he said to the jury that a self-represented litigant is like a pregnant woman trying to deliver her own baby." The remark in question was made during the voir dire of a prospective juror who was less than a month within the due date for her second child. The juror, a psychiatrist, said she was "somewhat disconcerted that the client is representing herself." The following exchange ensued: "Q. Yeah. [¶] A. I have concerns about that. [¶] Q. What's the concern? [¶] A. Just, in the process of negotiating, that it's very hard to negotiate on one's own behalf when things are sort of the more high stakes it is for an individual personally, it's the more vulnerable we are, the less capable we are of navigating a negotiation. [¶] Q. *Like you would not deliver your own baby, for instance*? [¶] A. Yes. [¶] Q. By way of example. [¶] A. Yes. [¶] Q. Well, but people have done it all along and delivered their own babies, right? [¶] A. Yeah. Not my choice. [¶] Q. Right. Probably even thousands of years ago, probably not a first choice. [¶] A. Yeah. [¶] Q. So I gave it a little thought, and the fact that somebody has or has not their own lawyer is not something a jury takes into account when they make their decision. . . ." (Italics added.)

In this context, the court's remark was not at all improper. The court was simply using a facet of the juror's life — her pregnancy — to explore whether she may have been biased against Nadeem as a self-represented litigant. The exchange assisted Nadeem by making it clear that her pro per status could not be held against her.

Nadeem objects to the court's statements concerning her exhibits 17 and 18, which consisted of emails sent on July 15, 2008. Nadeem authored the email depicted in exhibit 17, KPMG personnel authored those depicted in exhibit 18, and there was some confusion about the sequence of the messages. When the sequence was discussed, the court observed that the emails were " — a series. In other words, 17 got chopped off of 18. *That email thing is all very confusing*. Why don't we go back to letters and stamps." Nadeem reads the italicized sentence as "describ[ing] the Plaintiff's evidence to be 'very confusing' at the very best," but it was nothing of the sort. The statement was merely a comment about email correspondence generally, not about the quality of Nadeem's evidence.

Nadeem contends that the court showed bias when she sought to introduce exhibit 18 into evidence. The court asked KPMG's counsel if he had any objection, counsel objected that no foundation had been laid for the document's admission, and the court sustained the objection, explaining to Nadeem, "There has to be a foundation for an exhibit." Again, we discern no bias. The court simply made a correct evidentiary ruling.

Nadeem cites, as another example of alleged bias, the fact that the court asserted and sustained its own objection to an answer she gave during her cross-examination. After hearing the lengthy and at least partially nonresponsive answer, the court said, "Sustained. Narrative. Next question." This sua sponte objection was at worst an isolated expression of understandable frustration that did not establish bias. (*Brown, supra,* 6 Cal.4th at p. 337; *Hall, supra,* 69 Cal.App.4th at p. 843.)

Nor is any bias apparent in the other portions of the transcript Nadeem cites. Her accusations against the judge are unfounded.

E. Cost Bill

Nadeem contests certain of the costs that were awarded to KPMG. We do not address these arguments because they are raised for the first time in her appellant's reply brief. (*Reed, supra,* 106 Cal.App.4th at p. 1372, fn. 11.)

III. DISPOSITION

The judgment is affirmed.

_____
Siggins, J.

We concur:

_____
McGuiness, P.J.

_____
Jenkins, J.